



# **Tort Talk: Protecting Your Visitors and Your Park**

## **Participant Guide**

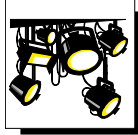


September 23, 2010

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# Welcome

Welcome to this TEL (Technology Enhanced Learning) training event. We are excited that you will be joining us today for *Tort Talk: Protecting Your Visitors and Your Park* and we look forward to helping you to get as much out of this time as possible.

Your classroom includes students from many different locations across the NPS. You have the opportunity to hear what everyone is saying. Don't hesitate to ask questions—if you have a question, there are probably several others in the class who have the same one—you might as well be the one to ask! It is our goal that you leave class today with no unanswered questions.

## How To Interact With the Instructor

We encourage you to ask questions and share your comments with the instructors throughout this TELNPS course.

If you were physically in the classroom with the instructor, you would raise your hand to let her/him know you had a question or comment. Then you would wait for the instructor to recognize you and ask for your question. We are all familiar with that “protocol” for asking questions or making comments.

With TELNPS courses there is also a “protocol” to follow to ensure that you can easily ask questions and others can participate as well. It may seem a little strange at first asking a question of a TV monitor. Remember, it is the instructor you are interacting with and not the monitor. As you ask more questions and participate in more TELNPS courses, you will soon be focusing only on the content of your question and not the equipment you are using to ask it.

As part of the TEL station equipment at your location, there are several push-to-talk microphones. Depending on the number of students at your location, you may have one directly in front of you or you may be sharing one with other students at your table.

When you have a question, press and hold down the push-to-talk button, maintaining a distance of 12-18 inches, and say,

*“Excuse me [instructor’s first name], this is [your first name]  
at [your location]. I have a question (or I have a comment).”*

Then release the push-to-talk button. This is important.

Until you release the button, you will not be able to hear the instructor.

The instructor will acknowledge you and then ask for your question or comment. Stating your name and location not only helps the instructor, but also helps other students who are participating at different locations to get to know their classmates.



## Course Overview

***Tort Talk: Protecting Your Visitors and Your Park*** “We can’t control people’s behavior.” How many times have you heard (or said) this? Accidents and injuries can be tragic reminders of the strength of our untamed environment, and can cost a park’s money, reputation, and even the lives of those involved. While it is true that you can’t completely control visitors’ actions, there are some things you can do to help your visitors stay safer, and protect your park from liability, as well. This 2-hour course covers basic concepts and includes discussion of common questions regarding tort liability, such as: “how do park decisions to do risk assessment, injury collection, and other prevention strategies potentially impact park liability?”, “What is the ‘duty of reasonable care’?”, “Will conducting a Board of Review on a visitor fatality put our park at greater risk of liability?”, “Aren’t we immune from being sued?”, and “How do state laws impact the liability of our park?”. Case examples from within NPS and other high-profile examples will be shared. Participants will have an opportunity to practice and apply their learning to real-time scenarios and hypothetical situations, with the goal to discern what parks have done and can do to be effective in protecting both their visitors and their park.

### Target Audience

Superintendents and Park managers in all Divisions. All staff who have a role in recognizing, responding to, and preventing hazardous situations at their park or site.

### Program Timing

*Tort Talk: Protecting Your Visitors and Your Park* is a 2-hour TELNPS course.

### Learning Objectives

After completing this course, you will be able to:

- Recognize and apply basic terms relevant to liability.
- Analyze tort claims against NPS to identify how park management decisions impact case outcomes.
- Describe three basic actions you can take to protect your visitors and your park.
- Explain why fear of tort liability should not interfere with risk management.

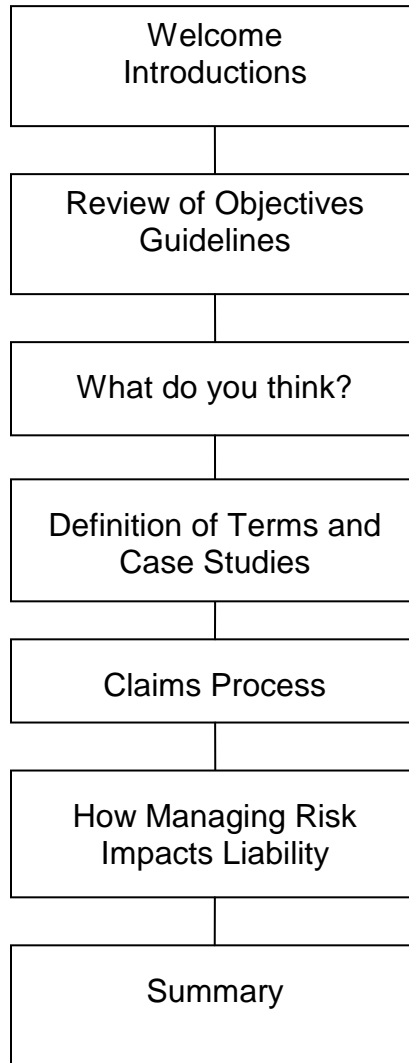
### Course Guidelines

- Actively participate in the course
- Use the TELNPS protocol for interactions
- Return from breaks on time
- Complete the entire course
- Have fun!

**Disclaimer:** This course contains general information only and is not intended to provide specific legal advice. Employees should consult with legal counsel regarding issues specific to circumstances in their parks

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## Course Map



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## ***Introduction***

- As land managers and custodians of the public resources, NPS is responsible to offer visitors an opportunity to enjoy the parks with a reasonable degree of safety.
- Liability of NPS and its employees is a major concern that arises whenever visitor safety is considered. Concern is warranted because there are both artificial and natural hazards in the park that are expected to be known, monitored, and in some cases actively managed by park employees.
- Land managers have a responsibility to have a basic knowledge of the resources they manage, including the hazards that are present.
- Courts have found that visitors can reasonably be expected to recognize and avoid most obvious hazards. But when hazardous conditions are unusual or hidden, courts have found that park employees have a responsibility to provide warnings or take steps to mitigate the hazards.
- National Park Service tort liability places a significant burden on the federal government.
- Between 2002-2009, the federal government has paid out an average of approximately five million dollars annually for claims stemming from NPS tort liability. This does not include payouts made by individual parks, or NPS staff time to handle cases.  
(<http://fms.treas.gov/judgefund/index.html>)
- Your job is to manage the park, not to avoid law suits.
- This course will help you understand the terms and processes of tort claims and also help you know how to best manage your park so you don't have to worry about law suits.
- That's why we have lawyers – we let them worry about the law suits!

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## **What Do You Think?**



*Directions: Please answer the questions below.*

***If someone is injured on NPS property, is NPS always automatically responsible to pay medical costs and damages to the injured person?***

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***If an accident occurs within the park jurisdiction, would it be better for the park to not make any post-accident improvements or repairs because it can be used as evidence that the park did something wrong?***

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***Can employees be personally sued by an injured party?***

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## ***Let's Define Terms***

### **Liability**

The quality or state of being obligated or legally responsible for one's acts or omissions.

### **Tort**

The legal term for a civil wrong, other than breach of contract, that results from when one person's action causes injury to another and for which a remedy may be obtained, usually in the form of damages.



### **Duty of Reasonable Care**

In general, NPS has a duty to use reasonable care to keep the premises safe and to guard or warn the visitor from any hidden danger or defect that presents a reasonably foreseeable risk of harm.

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## **Negligence**

NPS breach of duty of reasonable care was the proximate (legal) cause of the claimant's injury or property damage. Four elements of negligence must be met for liability to be established:

1. Existence of Duty
2. Breach of Duty
3. The Breach of Duty was the proximate (legal) cause of harm
4. The victim sustained harm (injury or property damage)

## **Sovereign Immunity**



- A principle with origins in early English common law
- King was immune from suit by his subjects.
- Rationale: since law emanated from the sovereign, he could not be held accountable in courts of his own creation.

Government is immune from lawsuits or other legal actions except when it consents to them. Without a waiver (Federal Tort Claims Act), any lawsuit is dismissed.

- Prior to 1946, US Government maintained sovereign immunity from damage claims.
- Special act of Congress required for an individual to collect damages for government wrongdoing.
- The Federal Tort Claims Act was passed to spare Congress from dealing with so many tort claims.

## **Federal Tort Claims Act (FTCA)**

Under this law, the United States is liable:

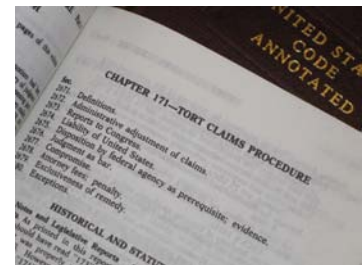
“for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.”

28 U.S.C. § 1346(b)

- Only allows compensatory damages (for damages sustained including pain and suffering)
- Not punitive damages (or damages intended to punish defendant)

### ***Notes about Federal Tort Claims Act (FTCA)***

- Requires some negligent act by a federal employee
- A private person would be liable under relevant state law

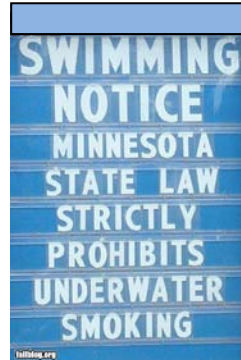


*Common sense test:* Was the employee acting in the interest of the employer at the time of the incident? If so, the government may be liable.

1. Does not cover intentional torts
2. Does not cover acts of contractors
3. Does not apply where the government is acting on policy. (Discretionary Function Exception)
4. Does not apply to law enforcement

*Remember: State law determines liability under the Federal Tort Claims Act*

1. Tort law is state law not federal law.
2. To waive sovereign immunity for tort claims state law must determine liability since tort law is state law.
3. Laws can vary from state to state – the same incident could have different results in one state than another.



**Notes:**

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## ***Government Defenses of Liability***

### **Recreational Use Statutes**

1. They exist (in almost all states) to encourage *private* land owners to make their properties available free of charge (or for only a nominal fee) to the public for recreational uses.
2. Where applicable, landowners have no responsibility to keep land safe or to warn of dangers.



If Recreational Use Statutes are state laws that only apply to private landowners, why does it matter for the National Park Service?

The FTCA only allows liability to the US government where state law would make a private person liable.

*How does the statute differ from state to state?*

*How does a park entrance fee impact this statute?*



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## Case Study: *Knieriem v. U.S.*

- Claimant bought ticket for performance at Filene Center inside of Wolf Trap Park
- Claimant tripped in parking lot and sustained serious elbow injury
- Virginia has a recreational use statute



Based on what you have learned about this situation, answer the following:

*Does it matter that but for claimant's concert ticket, she would not have been at the park?*

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## **Government Defenses of Liability**

### **Discretionary Function Exception (DFE)**

NPS policy is primarily based on NPS's primary legal mandate ("The Organic Act"): *to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

- The Discretionary Function Exception protects Federal employees to make broad-based actions or decisions based on "social, economic and political policy" (e.g. preservation, aesthetics, safety, budget, personnel). (See *United States v. Varig Airlines*, 467 U.S. 1984)
- The US Government cannot be found negligent for deciding on a course of action that is generally accepted and is within the scope of authority, even if that action is directly or indirectly a cause of injury or death.
- However, if there is an established policy, it must be followed and a manager cannot use discretion to avoid responsibility.

### **Two Pronged Test for DFE**

1. Whether the challenged conduct involved an element of judgment or choice; and
2. Whether the challenged discretionary acts of a government employee "are of the nature and quality that Congress intended to shield from tort liability." (*Varig*, 467 U.S. at 813, 104 S.Ct. at 2764.)

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## Case Study: *Dehne v. U.S. 1991*

- Carin Dehne is 18-year old on summer trip with family and friends at Arches National Park in Utah.



- While hiking, Carin and group visit scenic rock formation. Park Service had placed a warning poster on the bulletin board at the trail head warning that the rock formations were slippery to climbers. Warning also in pamphlet.
- At rock formation, Carin attempted to climb down back of rock slope and fell 40 feet – sustaining serious injury.

Based on what you have learned about this situation, answer the following:

*Would Court have found the park's warning (bulletin board and pamphlet) sufficient if hazard were less obvious or hidden?*

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*How is the park's management of that area within the discretionary function exception?*

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*To what degree did the claimant's own negligence weigh in here?*

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## Case Study: *Cope v. Scott* 1994



- On a rainy spring evening in 1987, Cope was driving north along Beach Drive. As a southbound vehicle driven by Scott rounded a curve, it slid into the northbound lane and hit Cope's car. Cope alleges he suffered neck and back injuries and sued Scott and the NPS.
- Claimant alleged that Beach Drive in DC's Rock Creek Park had an improper slope that caused vehicle to slide into oncoming traffic during rainstorm.
- Claimant alleged that road poorly designed and maintained, and should have had signs warning of the slippery condition.
- NPS defended on basis that road was designed for scenic purposes to improve visitor experience in park – design and signage left to NPS discretion.
- Evidence indicated that Beach Drive was managed as a major commuter thoroughfare.

Based on what you have learned about this situation, answer the following:

*Should Park have tried to continue to treat Beach Drive like a scenic parkway to preserve discretionary function?*

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## Identify Examples of Discretionary Functions

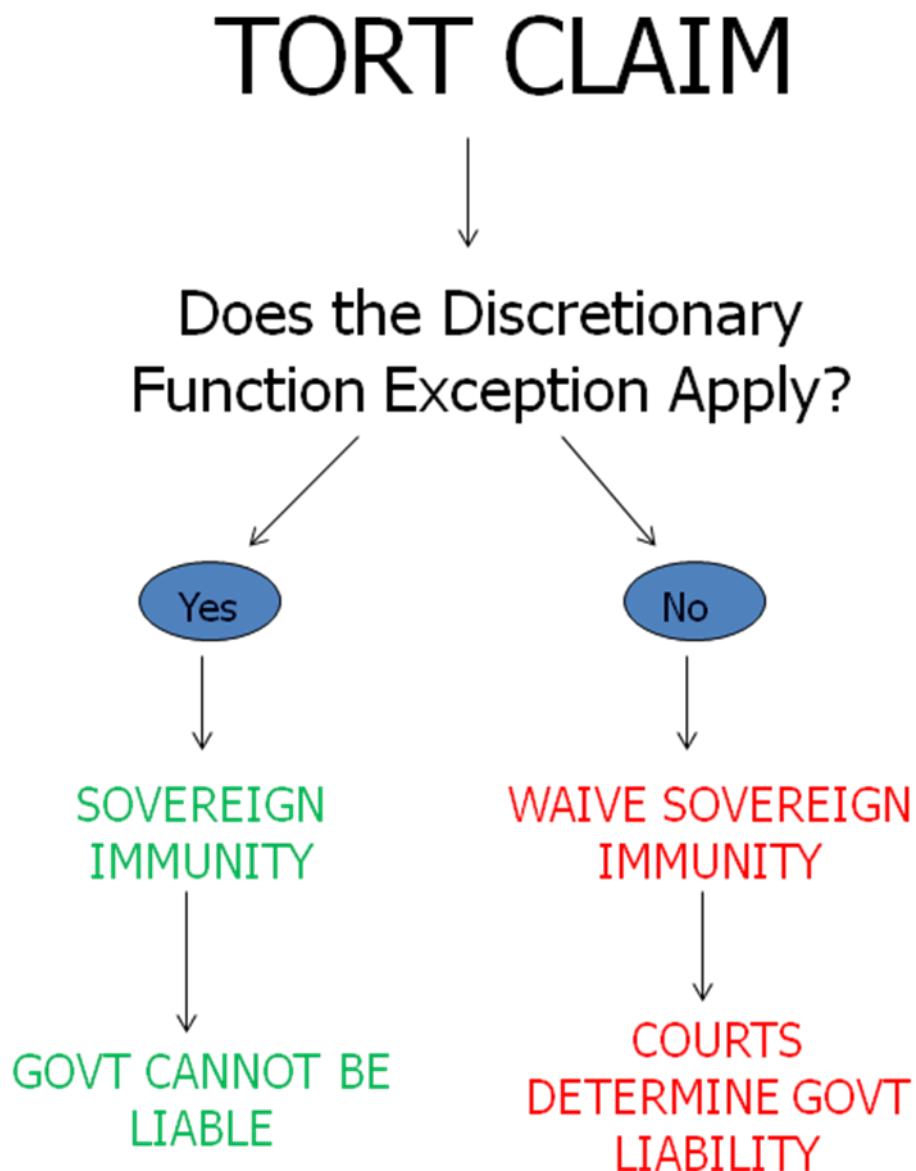
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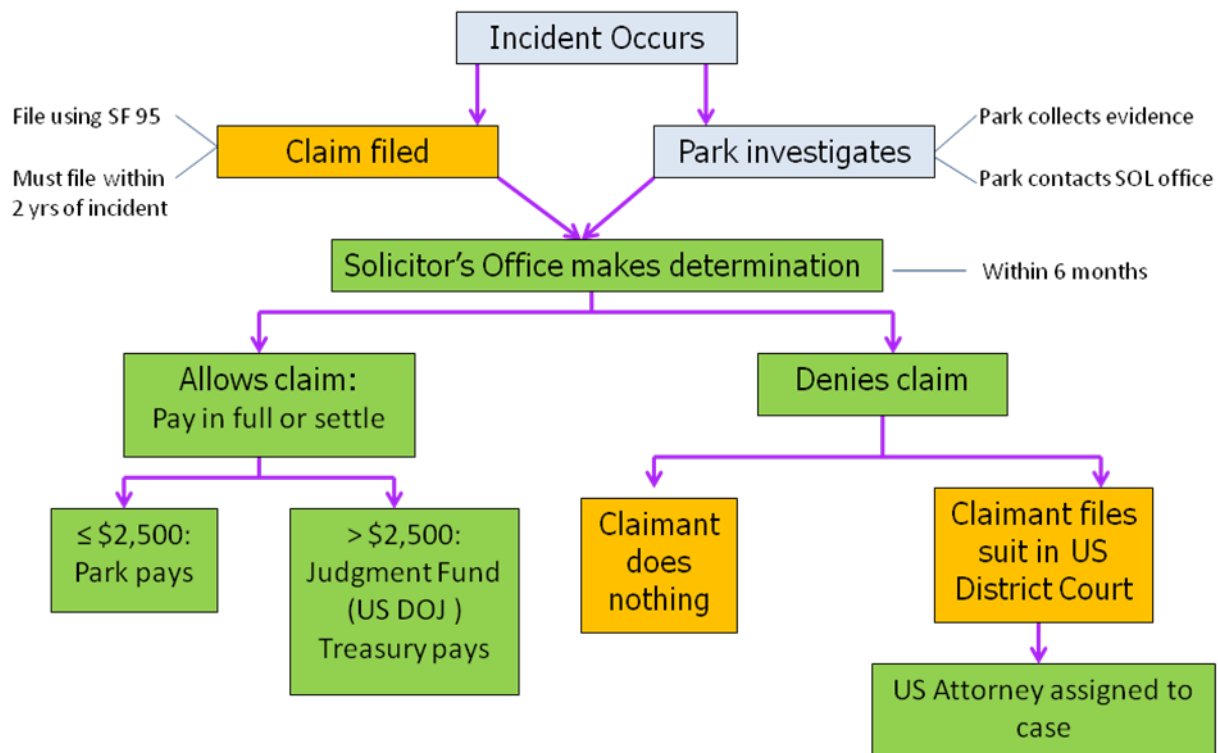
## Putting It All Together



## Claims Process

- Standard Form 95 (SF-95)
  - A claimant must file an SF-95 within 2 years of the incident
  - Government must admit or deny claim within 6 months of receipt
- After final decision on claim, claimant may file suit
  - Cases heard by judge, not jury

### Tort Claims Process



# Standard Form 95 (SF-95)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--|
| <b>CLAIM FOR DAMAGE,<br/>INJURY, OR DEATH</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                     | <b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions. |                                                                                                                                                                                                                                                    | FORM APPROVED<br>OMB NO. 1105-0008         |  |
| <b>1. Submit to Appropriate Federal Agency:</b><br><br>U.S. Army Claims Service<br>4411 Llewellyn Avenue<br>Fort Meade, Maryland 20755                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                     |                                                                                                                                                                                                                                  | <b>2. Name, address of claimant, and claimant's personal representative if any.</b> (See instructions on reverse). Number, Street, City, State and Zip code.<br><br>Empire State, Inc. Attn: John Jakob Raskob, 350 5th Ave.<br>New York, NY 10018 |                                            |  |
| <b>3. TYPE OF EMPLOYMENT</b><br>MILITARY <input type="checkbox"/> CIVILIAN <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>4. DATE OF BIRTH</b><br>04/04/37 | <b>5. MARITAL STATUS</b><br>married                                                                                                                                                                                              | <b>6. DATE AND DAY OF ACCIDENT</b><br>July 28, 1945                                                                                                                                                                                                | <b>7. TIME (A.M. OR P.M.)</b><br>9:40 A.M. |  |
| <b>8. BASIS OF CLAIM</b> (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).<br><br>Extensive damage was caused to the 79th and 80th floors of the Empire State Building when a B-25 bomber operated by the U.S. Army crashed into it. The plane tore a 20 x 18 ft. hole in the side of the building and penetrated two elevator hatches. One engine went through the elevators and exited the building through and exterior wall. The other engine and some landing gear passed through two elevator shafts, and fell down a third, damaging equipment and starting a large fire. (SEE PICTURE) |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| <b>9. PROPERTY DAMAGE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED.<br>(See instructions on reverse side).<br><br>Damaged: Exterior walls, windows, interior metal beams, 11 elevator hatches and cars, electrical conduits, phone lines                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| <b>10. PERSONAL INJURY/WRONGFUL DEATH</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| <b>11. WITNESSES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     | ADDRESS (Number, Street, City, State, and Zip Code)                                                                                                                                                                              |                                                                                                                                                                                                                                                    |                                            |  |
| [Redacted]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                     | Car #7 Operator<br>350 5th Ave.<br>New York, NY 10018                                                                                                                                                                            |                                                                                                                                                                                                                                                    |                                            |  |
| <b>12. (See instructions on reverse).</b> AMOUNT OF CLAIM (in dollars)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| 12a. PROPERTY DAMAGE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 12b. PERSONAL INJURY                | 12c. WRONGFUL DEATH                                                                                                                                                                                                              | 12d. TOTAL (Failure to specify may cause forfeiture of your rights).                                                                                                                                                                               |                                            |  |
| \$1,000,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |                                                                                                                                                                                                                                  | \$1,000,000.00                                                                                                                                                                                                                                     |                                            |  |
| <b>I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    |                                            |  |
| 13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |                                                                                                                                                                                                                                  | 13b. PHONE NUMBER OF PERSON SIGNING FORM                                                                                                                                                                                                           | 14. DATE OF SIGNATURE                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                    | 8/2/1946                                   |  |
| <b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b><br><br>The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                     |                                                                                                                                                                                                                                  | <b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b><br><br>Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)                                                                                                  |                                            |  |

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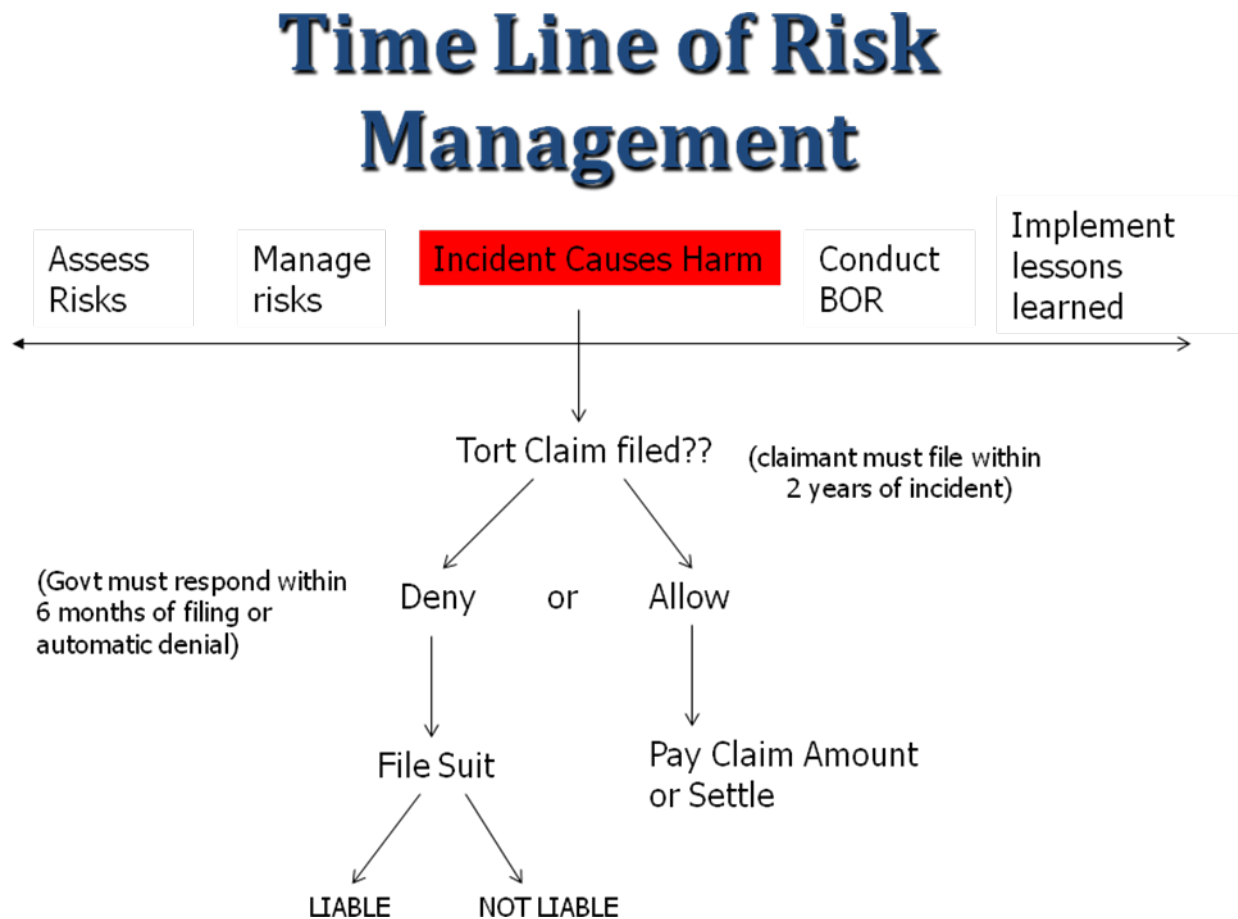
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STANDARD FORM 95 (REV. 2/2007)  
PRESCRIBED BY DEPT. OF JUSTICE  
28 CFR 14.2

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## Timeline of Risk Management

This timeline illustrates management actions along a continuum and their relationships to a possible tort action by a victim of injury:



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## DO 50C Implications

### Purpose of Director's Order 50 C

- Set a new Servicewide direction with increased emphasis on the prevention of visitor incidents.
- Provide standards or guidelines that enhance park efforts to improve overall injury *prevention* in parks.

### Park Actions Described in 50C

1. Risk Assessment
2. Injury Data Collection and Notification
3. Board of Review for Visitor Fatalities
4. Communication and Education

### Risk Assessment Per 50C

“A systematic process of evaluating various risk levels of specific hazards identified with a particular activity.... Parks should conduct periodic risk assessments as necessary within the park to identify hazards, set priorities, allocate resources, implement action plans, and reassess effectiveness of risk reduction activities; as appropriate, feasible, and consistent with NPS mandates.”

### QUESTION:

*How can risk assessments be used by parks as an opportunity for visitor risk management?*



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## Managing Risks

Examples of how we manage risk:

- Maintenance
- Prevention Programs
  - Life jacket program
  - Hazardous tree program
  - Snow removal programs
  - Education/communication (signs/brochures)



### Implications of Maintenance

- Maintenance is generally not subject to discretionary function.
- Failure to maintain facilities is probably primary cause of liability in parks.
- Maintenance is expensive!
- Maintenance or mitigation PLAN is often best solution.

### Implications of a Prevention Program

“The requirement of judgment or choice is not satisfied if a ‘federal statute, regulation or policy specifically prescribes a course of action for an employee to follow,’ because ‘the employee has no rightful option but to adhere to the directive” Berkowitz, 486 U.S> at 536, 108 S ct at 1958-59

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## Case Study: Snow Removal and Tree Removal Programs



- Common prevention programs in the parks
- What should a “snow removal” or “tree removal program” look like
- What they are not

Based on what you have learned these kinds of programs, answer the following:

*Should parks avoid creating prevention programs since it may not be possible to manage all the risk?*

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*How can parks maintain important prevention programs without those programs resulting in liability exposure for the park?*

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## Case Study: *Merando v. U.S.* (2008)

- Kathleen Merando and daughter driving through Delaware Water Gap National Recreational Area.
- Dead tree falls, crushing Merando vehicle, killing both occupants.
- Park Service aware of dead trees in park.
- Park Service had in place and executed a hazardous tree removal plan – but failed to remove this particular tree.



Based on what you have learned about this situation, answer the following:

***What was the main evidence that protected NPS from liability?***



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***In what ways does the case in DEWA differ from other cases in which the park has been found liable even when they have a prevention program to prevent incidents?***

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## Advice for Managing Risk

- Make decisions in a timely manner
- Rely on participation of well-represented park staff
- Document decisions



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## When an Incident Occurs

- Report the incident!
- Document the incident's facts – with details.
- Avoid opinions, speculation, and conclusions.
- When asked, inform the public about NPS claims process. Refer them to the Solicitor's Office.

***What should you NOT do when an incident occurs?***

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**Notes:**

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## Board of Review

The purpose of the BOR is to examine and evaluate all of the available facts relating to the accident to determine causal factors contributing to the mishap and to recommend actions (e.g. policies, procedures) to prevent recurrences.

While a Board of Review may provide lessons learned, not all fatal injuries will have correctable opportunities for the park because visitors will make risk choices that exceed their ability to manage that risk. (Reference: RM-50C Part 2.) In addition to enhancing our ability to prevent recurrence of serious incidents, a thorough investigation of all pertinent facts is essential to support a defense in the event a claim is filed against the Government. (DO 50C)

- *Does conducting a board of review open government up for liability?*
- *How should the BOR prepared to protect Government in case a tort claim is filed?*



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## Advice for Conducting a BOR

- Focus on gathering facts and causal factors.
- Only after fact gathering is complete and full consideration of issues conducted should any conclusions be drawn.
- Preliminary or hasty conclusions are often wrong.
- Consult with your attorneys in the DOI Solicitor's Office.

## ***BASED ON WHAT YOU HAVE LEARNED SO FAR:***

### **Managing Risks**

*Why are maintenance activities and established prevention programs generally not subject to the discretionary function?*

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*What is likely the primary cause of liability in parks?*

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*What are three pieces of advice for managing risk?*

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*When conducting a Board of Review what are some key points to remember?*

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## Summing It Up

### How NPS Attorneys Would Recommend Thinking About Safety:

- Safety should always be part of the analysis – but must be part of a balanced consideration of other factors.
- Safety can never be guaranteed.
- Warning of dangers does not have to mean posting a sign.
- Effective warning signs are ones that are specific to nature of risk.
- Assess risks reasonably.
- Make decisions in a timely manner with participation of well-represented park staff.
- Document decisions.

“Often the Park Service has defenses to claims that will be more effective with proper documentation – but this is not often done out of fear. Take photos, measurements, write notes.” Chuck Wallace, Attorney-Advisor, NCR

### Should park staff be concerned about tort liability in their day to day job?

Notes:



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## Continuing the Discussion

If you have additional questions after the course concludes, please contact Sara Newman at [Sara\\_Newman@nps.gov](mailto:Sara_Newman@nps.gov).

Questions and answers will be posted on the Public Risk Management Program (PRMP) website for easy access to all NPS staff.

To access the PRMP website, click on the NPSafe logo on front page of InsideNPS. Then click on the Visitor and Public Safety tab on the sidebar on the left.



## Course Evaluation

Please offer feedback on this course by completing a course evaluation!

- Go to the TEL website at: [www.nps.gov/training/tel](http://www.nps.gov/training/tel)
- Click on the DOI Learn tab
- Go to the link under Class Evaluations for *Tort Talk: Protecting Your Visitors and Your Park*
- Please complete the evaluation within 2 weeks of the course by October 8<sup>th</sup>.

Thank you!

## Acknowledgements

*We are grateful to the following individuals for the valuable input they have provided to develop this course.*

Richard Powell, Chief, Division of Risk Management

Tony Conte, Senior Attorney, Northeast Region

Patricia Corelyou-Hamilton, Attorney-Advisor, Southeast Region

Bill Back, Deputy Regional Solicitor, Pacific West Region

Lisa Deener, Producer

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## Appendix A: Web Resources

NPS Visitor Safety Webpage: <http://inside.nps.gov/waso/waso.cfm?prg=190&lv=3>

Contact: Sara Newman, [sara\\_newman@nps.gov](mailto:sara_newman@nps.gov) , 202-513-7225

CDC Center for Injury: <http://www.cdc.gov/injury/index.html>

Federal Tort Claims Act defined:

<http://legal-dictionary.thefreedictionary.com/Federal%20Tort%20Claims%20Act>

## Appendix B: Recommended References

Silver, Bill. Compendium of Defenses for FTCA Actions Arising in the National Park Service Pacific West Region, Office of the Field Solicitor, US Department of Justice, August 2004.

Ribner, Adam. National Park Service Tort Liability in the National Capital Region as an Indicator of Public Risk Management Program, Risk Management Division, November 2008.

Garner, Bryan A. editor, *Black's Law Dictionary* 9th ed. (West Group, 2009).

### Full Case Citations:

#### Discretionary Function Exception:

“Second Guessing”

United States v. Varig Airlines, [467 U.S. 797, 814](#), 820, 104 S.Ct. 2755, 2464-65, 2767-68, 81 L.Ed.2d 660 (1984).

“Two Pronged Test”

United States v. Gaubert, [499 U.S. 315](#), 111 S.Ct. 1267, 113 L.Ed.2d 335 (1991);  
Berkovitz v. United States, [486 U.S. 531](#), 108 S.Ct. 1954, 100 L.Ed.2d 531 (1988).  
Gaubert, [499 U.S. at 322](#), 111 S.Ct. at 1273.

#### Recreational Use Statute:

Dominque v. Preseley of Southern California, 243, Cal Rptr. 312, 197 Cal. App. 3d 1060 (1988).

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## Appendix C: Biographical Sketch

### **Dr. Sara Newman, CDR, United States Public Health Service Director, Public Risk Management Program**

Dr. Sara Newman serves as Director of the Public Risk Management Program in the Division of Risk Management at the National Park Service. Since she started working at NPS in December of 2006, Sara's priority has been to use an evidence-based approach to identify ways to support park efforts to prevent injuries to park visitors. A major part of her role has been to identify sources of visitor injury data to better scope the burden of the problem and target areas of greatest need. Recently, Sara established a student internship program to provide students opportunities to engage in practical research to fulfill academic requirements while gaining rich experience in injury epidemiology, and providing parks with needed support to enhance their injury prevention efforts. Sara is a member of the NPS Safety Leadership Council, which advises the NPS National Leadership Council on all safety related issues at NPS. She serves on the NPS Volunteers in Parks Advisory Board, is a member of the Steering Committee for the Wilderness Risk Management Conference, and is Chair of the Recreation and Sports Injury Subcommittee for the Injury Control and Emergency Health Services Section of the American Public Health Association.

Prior to her assignment with the NPS, Sara worked as Special Projects Advisor to the Deputy Assistant Secretary for Public Health Emergency Medical Countermeasures in the Office of Public Health Emergency Preparedness. Before this, Sara worked as an epidemiologist with the Division of Immigration Health Services where she managed the agency's infection control program, managed an infectious disease surveillance system and assisted in managing a Tuberculosis continuity of care program.

Sara earned her doctoral degree from the Uniformed Services University of the Health Sciences in epidemiology and social and behavioral sciences. In September of 2001, Sara joined the United States Public Health Service and worked with the Federal Bureau of Prisons to undertake her dissertation on sexually transmitted infections in female prisoners. She currently serves as a commissioned officer with the Public Health Service at the rank of Commander.

Prior to her doctoral studies, Sara served as a technical consultant for the World Bank, the International Center for Research on Women, Family Health International and she worked for two years with John Snow, Inc managing the agency's multilaterally funded projects. Sara earned her Master in City Planning at the Massachusetts Institute of Technology where she focused on program planning and evaluation. Sara is fluent in Spanish and speaks Portuguese.

Sara has received wide praise for trainings she has given throughout the National Park Service to a broad range of audiences on concepts and strategies related to injury prevention in the parks.

**Rob Eaton, Senior Attorney  
Solicitors Office, Department of Interior**

Rob Eaton has worked for the Solicitor's Office in Santa Fe, New Mexico, for more than twenty-one years. During that time he has provided legal assistance to most of the major client bureaus in the department. These days he primarily does work related to the National Park Service in Arizona, New Mexico, Texas, and Oklahoma. Before attending law school at the University of New Mexico, he worked as a seasonal ranger for the NPS for seven seasons in the Southwest. He also has a master's degree in writing from the University of Iowa.

**Charles Wallace,  
Solicitors Office, Department of Interior**

Charles Wallace is an attorney with the Department of the Interior Solicitor's Office – Division of General Law in Washington, DC. Mr. Wallace's practice involves defense of liability and Federal Tort Claims Act claims for all DOI operations in the National Capital Region, and acquisition and contracting issues that include legal review of significant procurements, defense of bid protest actions at the Government Accountability Office, and claims pursuant to the Contract Disputes Act. Mr. Wallace joined the Solicitor's Office in 2007, after relocating from New Orleans where Mr. Wallace was in private practice since 2000.

**Gabrielle Fisher  
Public Risk Program Specialist, NPS Public Risk Management Program**

Gabrielle became the Public Risk Program Specialist in June 2010. Gabrielle oversees the Public Risk Management Internship Program, the Training and Education Program, and the Communications Program for the Public Risk Management Program. Prior to her tenure at the NPS, she served as an Academic Advisor to undergraduates at The George Washington University and Coordinator for the Post Baccalaureate Program at the University of California, San Francisco, School of Medicine. She's currently pursuing a masters in Public Health at Des Moines University.